The second point can be dealt with very briefly. In the case of *R. v. Alsagoff*[1] the learned Chief Justice held that a mandatory order cannot be made in any case unless the procedure set out in section 255 is followed, that is to say, unless the Councillors make a complaint and the Magistrate's Court, hearing the complaint, makes a mandatory order on the owner or occupier. It was conceded by counsel for the respondent that this procedure was not followed in the present case and therefore the mandatory order was not properly made against the appellant.

For these reasons this appeal must be allowed.

Appeal allowed.

Solicitors: *Laycock & Ong.*

WONG YONG THENG & ANOR. v. REG.

[A. Cr. J. (Whitton J.) November 16, 1956]

[Singapore — Magistrate's Appeal No. 100 of 1956]

Criminal Trial — Order for disposal of property where accused is acquitted — Pawnbrokers Ordinance (Cap. 195), s. 27 — Criminal Procedure Code (Cap. 132), s. 430.

In this case the accused at the trial was charged with criminal breach of trust of certain jewellery. It appeared that the accused had obtained jewellery which belonged to one Hazara Singh, from the wife of that man, and had pawned them. At the conclusion of the trial the learned Magistrate acquitted the accused and then ordered (i) that the jewellery be returned to the owner, i.e., Hazara Singh, and (ii) that the accused should repay the pawnbrokers the sums he obtained from them on the jewellery. The learned Magistrate held that the wife had by transferring the jewellery secretly without the knowledge of her husband invested the jewellery with the character of stolen property and consequently the pawnings were unlawful within the meaning of section 27 of the Pawnbrokers Ordinance, thus conferring upon the Court the discretion to make an order for the disposal of the property. He was also of the opinion that if section 27 of the Pawnbrokers Ordinance did not apply, he had power to make the order under section 430 of the Criminal Procedure Code. The pawnbrokers appealed against the order.

Held: (1) the finding that the jewellery was stolen property could not be justified and therefore section 27 of the Pawnbrokers Ordinance could not be applied in this case;

(2) the Court had power to make an order for disposal of the property under section 430 of the Criminal Procedure Code;

(3) in the circumstances of the case the order that should be made is that the jewellery be returned to the owner on payment by him to the pawnbrokers of half the sums for which the jewellery was pledged.

Cases referred to:—

(1) *R. v. Yap To* 11 S.S.L.R. 73.

(2) *R. v. Nadaison* (1935) M.L.J. 148.

(3) *Sem Hin Pawnshop v. R.* (1952) M.L.J. 165.

(4) *Russul Bibee v. Ahmad Mosajee* I.L.R. 34 Cal. 347.

(5) *Ho York Quin of Chop Teck Chong Pawnshop v. R.* (1953) M.L.J. 1.

(6) *Leicester v. Cherryman* (1907) 2 K.B. 101.

MAGISTRATE'S APPEAL.

M. Karthigesu for the appellants.

J. F. McWilliam (Crown Counsel) for the respondent.

Whitton J. : — This is an appeal by the managers of two pawnshops against an order of the Eighth Magistrate concerning certain jewellery which had been the subject of a trial before him.

The facts relevant to the present issue are as follows. A woman named Malkit Kaur handed over to the Accused various pieces of jewellery which the learned Magistrate held to be the property of her husband. Malkit Kaur stated the reason she had done so was that the Accused had on different occasions asked her to let him have the articles for a few days to copy the designs. The Accused's story was that he had asked the woman for loans at different times and that she had handed over the jewellery to him, telling him to pledge it. At all events the Accused pawned the jewellery at the shops of the two appellants. Later it was recovered by the Police from these shops. The Accused was charged in due course with criminal breach of trust. The Magistrate at the conclusion of the trial acquitted him, and made the following order :—

(i) That the jewellery be returned to the owner (Hazara Singh).

(ii) That the Accused (S.N.M. Shaik Allaudin) repay the pawnbrokers the sums he has obtained from them on those articles.

It appears from his judgment that the learned Magistrate held the circumstance that Malkit Kaur had transferred this property secretly without the knowledge of her husband invested it with the character of stolen property and that, consequently, the pawnings had been unlawful within the meaning of section 27(1)(c) of the Pawnbrokers Ordinance (Cap. 195), thus conferring upon the Court the discretion to make an order of this nature. He was also of the opinion that if section 27 did not apply he had the power to make the order under section 430 Criminal Procedure Code.

The first ground of appeal was that the Magistrate was wrong in approximating the jewellery in law to stolen property. In this connection it is to be borne in mind the ground on which the Magistrate held the pawnings unlawful was that the jewellery had been stolen from the husband, not that it had been the subject of breach of trust by the pawner. That being so I do not think I need trouble myself about the conflicting authorities cited as to whether a loan of jewellery constitutes a trust within the meaning of

section 405 of the Penal Code. In support of the submission that the Magistrate was wrong in holding the property to have been stolen counsel for the appellants relied on sections 10(3) and 14 of the Married Women's Property Ordinance (Cap. 45). It was correctly argued in reply by the Deputy Public Prosecutor that these sections are merely procedural in effect, but if no criminal proceeding may be brought by a husband or wife (except in the situation laid down in the section which does not apply here) alleging theft while living together on the part of their spouse can it be maintained one has stolen the other's property? It may well be that a husband or wife in relation to the other's property commits an act in such circumstances and with such intention as would amount to theft within the meaning of section 378 of the Penal Code, but, although the Married Women's Property Ordinance merely says there can be no prosecution, not that there is no theft in such a case, I incline to the view in the absence of authority to the contrary the Penal Code cannot be regarded as having any application to a case like this. I think this view seems all the more likely to be correct when it is recalled that at common law as a wife was held to be one person with her husband appropriation of his goods by her do not constitute larceny (*vide Kenny* Outlines of Criminal Law 15th Ed. p. 211). The provision for prosecution in certain cases under the Married Women's Property Ordinance following the Married Women's Property Act 1882 creates an exception to the common law conception. For these reasons I am of the opinion the finding that the jewellery was stolen property cannot be justified.

It was next submitted that in this case it was not clear whether the Magistrate made the order under the Pawnbrokers Ordinance or the Criminal Procedure Code. I would say that it is clear that he purported to make it under the Ordinance, but alternatively under the Criminal Procedure Code if he was not correct in thinking it was a case in which an order under the Ordinance could be made. At this point it is relevant to observe that having regard to the fact that section 27 relates to proceedings before a Magistrate's Court I think "unlawfully pawned" in section 27(1)(c) must be taken to mean that the pawning involves the commission of a criminal offence. Presumably it would cover a case, to take an example, where it was proved the property pawned had been stolen but owing to some doubt as to the identity of the pawner no conviction resulted. If these views are correct the next question is whether the Magistrate could, and was right to, make an order under section 430 Criminal Procedure Code. Counsel for the appellant cited in this connection *Rex v. Yap To*[1]. I respectfully agree with this decision, but it ceases to be directly in point once it has been held section 27 does not apply. In my opinion the learned Magistrate had the power under section 430, which in its wording is comprehensive, to make the order he did. It remains to consider whether it was a proper case for the exercise of such discretion.

The Magistrate expressed the view, and this is the subject of another ground of appeal, that there had been absence of care on the part of the appellants in accepting the articles in this case. He stated :—

> "On the other hand it would appear from the evidence that these two pawnshops are in the habit of accepting articles in pledge from all and sundry without exercising any measure of prudence."

In apparent support of his order based on this finding the Magistrate cited three authorities. All three are, however, in my opinion, distinguishable from the present case in as much as in two of them, *Rex v. Nadaison*[2] and Magistrate's Appeal 62 of 1948 (unreported) it is certain that the property was stolen, and in the third, *Sem Hin Pawnshop v. Regina*[3] it was probably held to have been stolen, and it was certainly held that there had been an unlawful pawning. It would, I think, be dangerous to assume that what the Judges said in cases to which section 27 applied provided authority for a case like the present if I am right in thinking that section does not apply. In fact the position seems to be there is no local report on any case relating to pawned articles to which section 27 does not apply. The learned Magistrate referred, also, to three Indian cases, of which perhaps *Russul Bibee v. Ahmad Mosajee*[4] is the most in point, to the effect that under section 517 of the Indian Criminal Procedure Code, which is substantially similar to our section 430, the courts are empowered to make an order of the kind we are considering, even though no offence has been committed. As I have already said above it is my view the Magistrate had the power to make the order he did under section 430, but none of these Indian cases refer to pawned property, and I think the difficulty in our case is to determine whether it is one where the discretionary power conferred by section 430 should be exercised. Now it seems quite clear that the Court has the fullest discretion when acting under section 27 (*vide Ho York Quin of Chop Teck Chong Pawnshop v. R.*[5]), and *Leicester v. Cherryman*[6], to which the learned Chief Justice referred, suggests that the purpose of machinery of this nature in the legislation relating to pawnbrokers is to provide a summary remedy to save owners the necessity of bringing actions for the return of their property. I do not see why where section 27 does not apply similar use should not be made of section 430 in cases where the Magistrate is satisfied as to where ownership lies.

Where a criminal offence has been established it is true that the question of ownership is, generally speaking, less likely to be open to doubt, and, if on this issue the Magistrate feels there is doubt or difficulty, an order should not, as was said by Sir Charles Murray-Aynsley in *Ho York Quin's*[5] case, be made. In any event an order does not preclude civil proceedings to determine ownership. In the present case I think the learned Magistrate had adequate grounds for holding that Hazara Singh was the owner of the jewellery. I am at a loss, however, on perusal of the record to discover any foundation for his expression of the view that these two pawnshops are in the habit of accepting articles from all and sundry without exercising any measure of prudence. The only piece of evidence I can trace which appears to bear on the matter even remotely is a reply by one of the pawnshop assistants to the Court to the effect that his firm did not ask for original receipts for the gold articles. Without information as to the general practice of pawnbrokers in this respect it cannot be inferred that this disclosed a lack of care. Even if it did it would not justify stigmatising the other appellant. The learned Magistrate made a very sweeping condemnation and I should have expected him at least to have indicated the portions of the evidence he considered warranted his conclusion.

In my view it was not shewn there was any carelessness on the part of either Hazara Singh or of either of the appellants. Applying this view to the question of a disposal order (I may say in passing I doubt if the second part of the Magistrate's order, even though it may be equitable, is legal) I consider justice will best be met by amending the Magistrate's order as follows. The jewellery will be returned to the owner Hazara Singh on payment by him to the appellants of half the sums for which in each case the jewellery was pledged, such payments to be made within one calendar month of the date of this judgment. Any sums already paid by S. N. M. Shaik Allaudin to the appellants will, however, be credited to Hazara Singh in respect of the payments due to be made by him.

Order accordingly.

K. NATARAJAN v. EWART & CO. (CIVIL ENGINEERS) LTD.

[O. C. J. (Whyatt C.J.) November 21, 1956]

[Singapore — Civil Suit No. 544 of 1955]

Procedure — Discontinuation of counter-claim without leave of Court — Amendment of defence.

In this case by an Order of Court dated August 14, 1956 the plaintiff obtained leave to amend his Statement of Claim and by the same Order of Court the defendants were given liberty to deliver an amended defence. After the amended Statement of Claim was served on the defendants, they made a number of amendments to their defence, some of which were not necessitated by or in any way consequential upon the plaintiff's amendments. The defendants also discontinued their counter-claim. The plaintiff thereupon applied to the Court to determine (i) whether the counter-claim had been discontinued contrary to the Rules of the Supreme Court, and (ii) whether certain of the amendments to the defence were in excess of the authority of the Order of Court of August 14, 1956.

Held: (1) in discontinuing their counter-claim without obtaining leave of the Court, the defendants had committed a breach of the Rules of the Supreme Court;

(2) the Order of Court did not give the defendants leave to amend generally but only to make amendments consequential on the amendment of the plaintiff's Statement of Claim;

(3) therefore the defence must be struck out unless the defendants applied to Court for leave to discontinue their counter-claim and to amend their defence.

Cases referred to:—

(1) *Fox v. Star Newspaper. Co.* (1898) 1 Q.B. 638.

(2) *Han Poo (Boo) Joon v. Baey Kim Swee & Co. Ltd.* Singapore — Suit No. 1091 of 1955 — unreported.

CIVIL SUIT.

N. A. Christopher for the plaintiff.

J. L. P. Harris for the defendants.

Whyatt C.J. : — Since the writ in this action was issued in March 1955, these proceedings have had an unfortunate history. There has been voluminous correspondence between the solicitors for the parties, followed by numerous interlocutory applications, which culminated in part of the plaintiff's claim being struck out in June 1956 on the formidable ground that it was unintelligible. The plaintiff thereupon, with the leave of the Court, amended his Statement of Claim and the result, though not one of the most elegant specimens of pleading, at least presents the claim in intelligible form.

It might have been expected, and certainly it could have been hoped, that the Statement of Claim, having been recast in this manner, the progress of this action towards trial would take a smoother course. But this, unfortunately, has not proved to be the case. When the plaintiff was given leave to amend his Statement of Claim, the defendants naturally asked for and were given leave to amend their defence as well. This they proceeded to do, making a number of important amendments to meet the amended allegations in the Statement of Claim. But in addition, they availed themselves of the opportunity to make further amendments to the defence, which were not necessitated by or in any way consequential upon the plaintiff's amendments and lastly they discontinued their counter-claim.